

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ADVANCED TELCOM GROUP, INC., Complainant, vs. U S WEST COMMUNICATIONS, INC. Respondent.	DOCKET NO. FCU-99-2
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**ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE AND
DENYING REQUEST FOR FORMAL PROCEEDING**

(Issued July 8, 1999)

On April 27, 1999, Advanced TelCom Group, Inc. (ATG), filed a complaint with the Board concerning the alleged actions of U S WEST Communications, Inc. (U S West), related to U S West's proposed sale of certain exchanges in Iowa. ATG alleges U S West will not qualify ATG as a bidder for the local exchanges, will not tell ATG how bidders may become qualified, and may be excluding other current and potential competitors from the bidding process. ATG submits that U S West is trying to limit the pool of available bidders in an effort to prevent market entry by possible competitors. ATG asks the Board to investigate U S West's practices in this respect.

ATG says that, if necessary, it will challenge any application filed with the Board for approval of any sale resulting from U S West's bid process, arguing that

any such sale is contrary to the public interest due to exclusion of bidders like ATG. ATG submits that if its arguments are not presented until an application for approval of the sale is pending before the Board, U S West will argue it is too late to change the bid process, due to the significant resources that will have been expended by that time. Accordingly, ATG asks the Board to review the matter now.

ATG alleges it can demonstrate U S West's actions, which have prevented ATG from qualifying and bidding, are discriminatory and "violate the spirit of the Communications Act, as amended."

On May 7, 1999, the Board issued an order initiating complaint proceedings and directing U S West to file an answer to the ATG complaint.

On May 17, 1999, U S West filed its answer. U S West expresses its opinion that it "has no legal obligation to negotiate with any particular potential acquirer of one or more exchanges that U S West may seek to sell." U S West argues that the Board's review authority is limited to the final sale transaction and that it would be premature for the Board to try to review U S West's bidder selection process. Finally, U S West states its selection process was designed to ensure that current customers in the exchanges for sale continue to receive service from a highly-qualified telephone exchange operator. To that end, U S West responded to numerous unsolicited requests for information regarding the exchanges and invited more than 80 potential buyers to submit a non-binding expression of interest. The potential buyers were selected based upon unspecified objective criteria established by U S West.

On May 26, 1999, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an appearance and a petition for formal proceedings. Consumer Advocate alleges U S West's answer is inadequate and argues the public interest would be served by investigating ATG's allegations at an early stage in the sale.

On June 15, 1999, U S West filed an answer to Consumer Advocate's petition. U S West argues that, in the event it negotiates a sale of certain exchanges in Iowa, the Board's role is limited to approval or disapproval of the transaction negotiated by U S West.

The Board will deny Consumer Advocate's petition for formal complaint proceedings and will close this investigation of ATG's complaint. The Board does not agree with U S West's argument that the Board cannot investigate a proposed sale transaction prior to the filing of an application for reorganization. As noted by Consumer Advocate, IOWA CODE §§ 476.2(1), 476.2(4), and 476.3(1) (1999) give the Board broad general powers to investigate and inquire into the management of public utilities operating in Iowa, completely separate from the Board's authority to review proposed reorganizations pursuant to IOWA CODE § 476.77(1).

Based upon U S West's May 17, 1999, answer, however, the Board does not believe it is appropriate to investigate this complaint further in this docket. U S West describes a process that appears to have the potential to result in a reorganization that can satisfy the requirements of IOWA CODE § 476.77(3). U S West (and the prospective purchaser) will bear the burden of establishing that each of the statutory

criteria is satisfied, and the Board will wait until a proposal for reorganization is filed to review U S West's activities. ATG, Consumer Advocate, or any other party is free to raise in that proceeding any issues they may have concerning whether U S West's buyer selection process was lawful. If the issue is raised in the reorganization docket, U S West should not argue that, because of the resources it has already expended in to the process of selecting a buyer, it is too late to challenge the bid procedures at that time. ATG's complaint is sufficient to put U S West on notice of the issue at an early stage.

IT IS THEREFORE ORDERED:

1. The complaint filed by Advanced TelCom Group, Inc., on April 27, 1999, is dismissed.
2. The petition for formal proceedings filed by the Consumer Advocate Division of the Department of Justice on May 26, 1999, is denied.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 8th day of July, 1999.